IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1283 OF 2003
IN
SECOND APPEAL NO. 110 OF 2003

Mrs.Alka Ashok Nilkar. ... Appellant.
Versus.
Arun gopal Dahiwadkar @ Waikar
and others. ... Respondents.

Shri K.V.Tembe for the Applicant.

Shri Bhagwat for the Respondents Nos.1, 3 to 6.

Shri G.S.Godbole for the Respondents Nos.7 and 9.

Shri Muzumdar for the Respondent No.8.

CORAM : ABHAY S. OKA, J.

DATED : 1st April, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The office noting shows that the Respondent No.2 is duly served.

2. The prayer in this Application is for setting aside the Judgment and Order dated 8th April 2003 passed by this Court in Second Appeal No.110 of 2003. One of the grievance made in the Application is that the Applicant was not a party to the Second Appeal and the order passed in the Second Appeal proceeds on the assumption that the Applicant was a party Respondent No.7 to the Second Appeal. The learned Advocate appearing for the Applicant submitted that in view of what is stated in

paragraphs 1, 4 and 5 of the Judgment and Order dated 8th April 2003, the rights of the Applicant are affected. He submitted that the Appellant was not aware of the pendency of the Appeal and in any event no notice of the Second Appeal was served by the Applicant. The application is opposed by the various Respondents. Affidavits-in-reply are filed by the Respondent Nos.7 and 8.

3. I have heard the Advocates appearing for the parties on the merits of the application. A perusal of the record of the Second Appeal shows that initially the Applicant was not a party to the Second Appeal. However, record shows that on 8th April 2003 by an amendment, the Applicant has been impleaded as a party Respondent. The record also shows that apart from the Judgment and Order dated 8th April 2003 annexed to the Civil Application at Exh.B, there is a separate order passed on the farad sheet by which this Court permitted amendment to the Memorandum of Appeal for adding the name of the present Applicant as the Respondent No.7. In this Application there is no prayer made for setting aside the other order passed on 8th April 2003 by which the name of the Applicant was permitted to be impleaded in the Second Appeal as the Respondent No.7.

4. The record of the Appeal shows that the notice of the Second Appeal was not served on the Applicant. The

learned Advocates appearing for the parties have fairly stated that the notice of the Second Appeal was not served on the Applicant. The record does not show that the Applicant was represented in the Second Appeal by any Advocate.

5. The Judgment and order dated 8th April 2003 records that the Applicant shall not be entitled to claim any right, title and interest in a particular property and the Applicant will accept a certain amount along with other the Respondents in the Second Appeal in full and final settlement of her claim in respect of a property as mentioned in paragraph 5 of the said Judgment and order. There is no dispute that the present Applicant was not served with the notice and was not heard when the said Judgment and order dated 8th April 2003 (Exh.B to the Civil Application) was passed. As the Judgment and order is passed without hearing the Applicant only on this ground this Application deserves to be allowed.

6. At this stage Shri Godbole, the learned Counsel appearing for the Respondents Nos.7 and 9 states that the separate order passed on 8th April 2003 for impleading the Applicant as party Respondent No.7 in the Second Appeal may also be set aside. The Applicant in this Application is not praying for setting aside the said order. Therefore, the said request cannot be considered. If the Respondents Nos.7 and 9 have any

grievance about the said order it is for them to take out appropriate proceedings in that behalf.

7. Accordingly Judgment and order dated 8th April 2003 is recalled and the Second Appeal No.110 of 2003 is restored to file. Civil Application is disposed of in the above terms with no order as to costs. It is made clear that no adjudication is made on any other grievance made in this Application.

Judge.